

**Letter of Findings Number: 06-0320P  
Withholding Tax  
For the Month of April 2006**

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**ISSUE**

**I. Tax Administration – Penalty**

**Authority:** IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2](#);

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late filing of a monthly withholding tax return for the month of April 2006.

**I. Tax Administration – Penalty**

**DISCUSSION**

The taxpayer requests the penalty be abated as (1) the taxpayer incurred unusually high employee turnover, (2) the taxpayer has a quality compliance record, and (3) the taxpayer did not commit willful negligence.

With regard to the employee turnover, the Department takes the position that a taxpayer has control of an employee's performance and any dereliction of duty on behalf of an employee is the responsibility of the taxpayer. In the instant case, tax compliance faltered as the taxpayer incurred high employee turnover. The Department takes the position that the taxpayer has control over employee turnover, and therefore, the taxpayer is negligent and fails to establish reasonable cause on this point.

With regard to the compliance record, the taxpayer has had seven late billings in the last several years. The Department feels that this a compliance record that would not be a factor in the abatement of penalty.

The taxpayer states that the taxpayer did not act with willful negligence. The Department points out that the taxpayer is being penalized for inattention and not willful negligence. There are two cites in the regulations that deal with penalty. [45 IAC 15-11-2](#) (c) states that penalty is to be applied in the event of negligence. Regulation [45 IAC 15-11-2](#) (c) follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of the tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence...

[45 IAC 15-11-2](#) (b) goes on to state that inattention is negligence.

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Therefore, as the Department finds the taxpayer inattentive to tax compliance duties, the Department finds the taxpayer negligent and subject to penalty.

**FINDING**

The taxpayer's penalty protest is denied.

*Posted: 01/03/2007 by Legislative Services Agency*  
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